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Attorneys for Plaintiffs/Petitioners San Jose Retired
Employees Association, Howard E. Fleming,
Donald S. Macrae, Frances J. Olson, Gary J. Richert
And Rosalinda Navarro

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10, inclusive,

Defendants.

AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS.

) Lead Consolidated Case No. 1-12-CV-225926
) (Consolidated Actions 1-12-CV-225928,
) 1-12-CV-226570, 1-12-CV-226574,
) 1-12-CV-227864 and 1-12-CV-233660)

) (Hon. Patricia M. Lucas, Dept. 2)

) **PLAINTIFFS/PETITIONERS SAN JOSE
RETIRED EMPLOYEES ASSOCIATION,
HOWARD E. FLEMING, DONALD S.
MACRAE, FRANCES J. OLSON, GARY J.
RICHERT, AND ROSALINDA
NAVARRO'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR SUMMARY
ADJUDICATION AND BY THE CITY OF
SAN JOSE; DECLARATION OF JACOB A.
KALINSKI**

) Date: June 7, 2013

) Time: 9:00 a.m.

) Dept.: 2

) Complaint Filed: June 6, 2012

) Trial Date in Consolidated Actions:

) July 22, 2013

1 Pursuant to California Evidence Code Sections 452 and 453, Plaintiffs San Jose Retired
2 Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J.
3 Richert, and Rosalinda Navarro request that this Court take judicial notice of the following:

4 Exhibit 1: San Jose City Charter, Sections 1500, 1501, 1503, and 1505

5 Exhibit 2: Section 1502-A of Measure B

6 Exhibit 3: Ballot Argument in favor of Measure B

7 Exhibit 4: San Jose Municipal Code Section 3.28.340 prior to passage of Measure
8 B

9 Exhibit 5: Order Re: Demurrer and In the Alternative Motion to Strike in Case No.
10 1-12-CV-233660.

11
12 SILVER, HADDEN, SILVER, WEXLER & LEVINE

13
14 DATED: May 8, 2013

15 By: 

JACOB A. KALINSKI

Attorneys for Plaintiffs/Petitioners
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Section 453 of the California Evidence Code directs that judicial notice shall be taken of
3 any matter specified in Section 452 if a party requests it, affords sufficient notice of the request
4 to each adverse party so as to enable such party to prepare to meet the request, and furnishes
5 the Court with sufficient information to enable it to take judicial notice of the matter.

6 Exhibit 1: San Jose City Charter, Sections 1500, 1501, 1503, and 1505

7 Evidence Code Section 452(b) provides that that judicial notice may be taken of the
8 “regulations and legislative enactments issued by or under the authority of the United States or
9 any public entity in the United States.”

10 Exhibit 2: Section 1502-A of Measure B

11 Evidence Code Section 452(b) provides that that judicial notice may be taken of the
12 “regulations and legislative enactments issued by or under the authority of the United States or
13 any public entity in the United States.”

14 Exhibit 3: Ballot Argument in favor of Measure B

15 Evidence Code Section 452(c) provides that judicial notice may be taken of the
16 “Official acts of the legislative, executive, and judicial departments of the United States or of
17 any state of the United States.”

18 Evidence Code Section 452(g) provides that judicial notice may be taken of “Facts and
19 propositions that are of such common knowledge within the territorial jurisdiction of the court
20 that they cannot reasonably be the subject of dispute.”

21 Evidence Code Section 452(h) provides that judicial notice may be taken of “Facts and
22 propositions that are not reasonably subject to dispute and are capable of immediate and
23 accurate determination by resort to sources of reasonably indisputable accuracy.

24 Exhibit 4: San Jose Municipal Code Section 3.28.340 prior to the passage of
25 Measure B

26 Evidence Code Section 452(b) provides that that judicial notice may be taken of the
27 “regulations and legislative enactments issued by or under the authority of the United States or
28 any public entity in the United States.”

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2. I am an attorney with Silver, Hadden, Silver, Wexler & Levine, attorney of record for Plaintiffs San Jose Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert, and Rosalinda Navarro in this action.

4. Attached hereto as Exhibit 2 is a true and correct copy of Section 1502-A of Measure B.

6. Attached hereto as Exhibit 4 is a true and correct copy of San Jose Municipal Code Section 3.28.340 as it existed prior to the passage of Measure B.

Executed this 8 day of May 2013 at Santa Monica, California.


JACOB A. KALINSKI

ARTICLE XV

RETIREMENT

SECTION 1500. Duty to Provide Retirement System.

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.

SECTION 1501. Exclusions.

The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in sub-paragraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.

SECTION 1503. Continuance of Existing Retirement Systems.

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

SECTION 1505. Minimum Benefits for Officers and Employees Other Than Members of the Police or Fire Departments.

The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

(a) **SERVICE RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death an annual retirement allowance equal to two percent (2%) of his or her "final compensation," hereinafter defined, per each year of his or her first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his or her service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he or she:

(1) Completes twenty-five (25) years or more of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or

(2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his or her years of service.

(b) **DISABILITY RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of "service," hereinafter defined, and is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his or her request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability, a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code as said Topic and Chapter read on the effective date of this Charter.

(c) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the City, other than those hereinafter excluded, to any retirement fund, system or plan for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or for or because of any benefits provided by any such program.

(d) DEFINITIONS. As used in this Section, "service" means all service for which an officer or employee is entitled to credit under the provisions of the retirement system established by Part 4 of Chapter 9 of Article II of the San Jose Municipal Code as such Part 4 reads on the effective date of this Charter; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code. Also, as used in this Section, "disabled" means the incurrance of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her.

(e) MISCELLANEOUS. The benefits hereinabove specified are minimum only; and the Council in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any service or disability retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

(f) PERSONS EXCLUDED. The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons mentioned or referred to in Section 1501; and any and all officers and employees in the Police Department and Fire Department of the City; any person or persons who have been retired from the service of the City prior to the effective date of this Charter; and any and all persons to whom, on the effective date of this Charter, the provisions of Topic 15A of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code, as it reads on the effective date of this Charter, do not apply.

Amended at election June 7, 1994

Section 1502-A: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

February 8, 2012

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

Argument in Favor of Measure B

Annual retirement costs skyrocketed from \$73 million to \$245 million over the last decade, causing service cuts throughout the city. The City's share of retirement costs exceeds 50% of payroll, far more than the 6.2% of payroll private employers pay for social security. Retirement costs consume more than 20% of the general fund and are projected by independent actuaries to increase for years. This is unsustainable.

Many city retirees receive more than \$100,000 per year, plus healthcare benefits.

Future generations of taxpayers will have to pay billions of dollars for unfunded liabilities created by the retirement plans.

Measure B would protect retirement benefits already earned by current employees but would reduce the cost to the city by making changes going forward. It would not cut current payments to retirees. It would prohibit spiking of pension benefits.

Current city employees will pay a larger share of the cost of retirement benefits, a step already taken by over 200 California cities. New employees and the city would share the cost of retirement benefits with a 50/50 match in a new lower-cost plan. Over 100 California cities have adopted lower-cost plans for new employees:

City employees are presently paying less than 1/4 of the cost of their retirement benefits. Private sector employees usually pay 1/2 of the cost. Measure B will require current city employees to pay more than 1/3 of the cost of their retirement benefits and new city employees to pay 1/2 of the cost of their retirement benefits.

The City Charter gives the voters the right to change retirement benefits. The city will seek judicial review before changes are implemented to minimize legal disputes.

Mayor Reed, Vice Mayor Nguyen, and Councilmembers Constant, Herrera, Liccardo, and Oliverio support Measure B.

Vote yes on Measure B for pension reform.
www.sanjosefiscalsreforms.com

Signatories

Chuck Reed, Mayor of San Jose

Matthew Mahood, President & CEO, San Jose Silicon Valley Chamber of Commerce

John Roeder, President, Santa Clara County Taxpayers Association

Suzanne Salata, San Jose Small Business Owner

Fernando R. Zazueta, Attorney at law

The board shall deposit, to the credit of the retirement fund, all amounts received by it under this chapter in the city treasury or in such custodial accounts as are established with the custodian bank.

(Prior code § 2904.1104; Ord. 25092)

3.28.340 Disposition of earnings.

A. Definitions. For the purpose of this Section 3.28.340, the terms listed herein shall have the following meanings:

1. "Income account" means the account established in the general reserve pursuant to subsection B. below.
2. "Interest crediting rate" means the interest rate determined by the Board for crediting the employee contribution reserve.

B. Retirement fund reserves. There shall be established in the retirement fund the following reserves:

1. The employee contribution reserve.
 - a. The board shall credit to the employee contribution reserve all contributions made by members of the retirement system and all interest payable pursuant to subsection C. below.
 - b. Moneys in the employee contribution reserve shall be available for the payment of benefits and for the return of contributions pursuant to Section 3.28.780.
2. The supplemental retiree benefit reserve.
 - a. The board shall credit to the supplemental retiree benefit reserve all interest payable pursuant to subsection C. below and that portion of the excess earnings determined pursuant to subsection D. below.
 - b. Distributions from the supplemental retiree benefit reserve shall be made in accordance with subsection E. below.
3. The general reserve.
 - a. The board shall establish an income account and shall credit the income account with all rents, interest, dividends, realized gains and losses, unrealized gains and losses, and all other income other than employer contributions, received during the fiscal year. The board shall pay from the income account all expenses and administrative costs as they are incurred.
 - b. The board shall credit to the general reserve all contributions made by the city, all interest payable pursuant to subsection C. below, and that portion of the excess earnings determined pursuant to subsection D. below.
 - c. Moneys in the general reserve shall be available for the payment of benefits and for the payment of the expenses and administrative costs of the retirement system.
4. Such other reserves as the board may determine from time to time.

C. Credit to contributions and reserves. All interest credited pursuant to this subsection C. shall be deducted from the income account.

1. Interest shall be credited to the employee contribution reserve on a semi-annual basis, or more frequently if authorized by the board, at the interest crediting rate.

2. Interest shall be credited to the supplemental retiree benefit reserve at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower. Interest credited to the supplemental retiree benefit reserve shall be calculated as though the transfer of excess earnings required by subsection D. had been made on July 1 of the calendar year, regardless of the actual date such transfer is made.

3. Interest shall be credited to the general reserve as follows:

a. Interest at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower; plus

b. Interest calculated as the difference between (i) the interest that would have been credited to the employee contribution reserve had the employee contribution reserve been credited at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower, and (ii) the interest actually credited to the employee contribution reserve pursuant to subsection C.1. above; provided, however, that there shall be no offset to the general reserve in any case where this difference is a negative number.

4. Interest shall be credited to any other reserves established by the board in the same manner as interest is credited to the supplemental retiree benefit reserve.

D. Excess earnings.

1. Within ninety days from and after receipt of audit reports for each fiscal year, the board shall determine the balance remaining in the income account after crediting of interest as provided in subsection C. above, and after payment of administrative costs and expenses of the retirement system for the applicable fiscal year.

2. If the balance remaining in the income account is greater than zero, the board shall by written resolution declare that balance to be the excess earnings for the applicable fiscal year, shall transfer ten percent of the excess earnings to the supplemental retiree benefit reserve, and shall transfer the remaining ninety percent of the excess earnings to the general reserve. If the balance remaining in the income account is less than or equal to zero, the board by written resolution shall declare that there are no excess earnings and shall adjust the general reserve to reflect any negative balance in the income account so that the balance in the income account is zero as of the beginning of each fiscal year.

E. Distributions from the supplemental retiree benefit reserve.

1. The supplemental retiree benefit reserve shall be used only for the benefit of retired members, survivors of members, and survivors of retired members.

2. Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit

reserve to retired members, survivors of members, and survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental retiree benefit reserve to said persons.

(Prior code § 2904.1103; Ords. 20596, 22263, 22486, 23087, 25092, 27436.)

3.28.350 Investment of funds - Conditions and limitations.

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The assets of the retirement plan must not revert, and no contributions shall be permitted to be returned to the employers, except as permitted by Revenue Ruling 91-4.

B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan, and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.

D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.

E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

(Ords. 25092, 28885.)

3.28.355 Investment of funds - Delegation of authority.

Without limiting the authority of the board itself to invest and reinvest the moneys of the retirement fund as provided in Section 3.28.350, the board may adopt an investment resolution or resolutions containing detailed guidelines, consistent with Section 3.28.350. While the resolution or resolutions are in effect, investments consistent with such guidelines may be made by an officer of the board, an officer or employee of the city, or a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.28.375, provided that such officer, employee or advisor has been delegated such authority by the board and such officer, employee or advisor has been designated by name in the investment resolution or resolutions. Any transactions made pursuant to the foregoing provisions of this section shall be reported monthly to the board by the person or persons to whom the board has delegated such authority.

(Ord. 25092.)

3.28.360 Security loan agreements.

A. The retirement board may enter into contractual arrangements with broker-dealers and with

Indorsed
FILED
FEB 19 2013

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of Santa Clara
BY [Signature] DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAN JOSE RETIRED EMPLOYEES
ASSOCIATION, et al.,

Plaintiffs/ Petitioners,

vs.

CITY OF SAN JOSE, et al.,

Defendants/ Respondent.

BOARD OF ADMINISTRATION FOR THE
FEDERATED CITY EMPLOYEES
RETIREMENT SYSTEM,
Real Party in Interest.

Case No. 1-12-CV-233660

ORDER RE: DEMURRER AND IN THE
ALTERNATIVE MOTION TO STRIKE

The demurrer and in the alternative motion to strike by defendant/ respondent the City of San Jose came on for hearing before the Honorable Peter H. Kirwan on February 19, 2013, at 9:00 a.m. in Department 8. The matter having been submitted, the court orders as follows:

1 The request for judicial notice in support of demurrer and motion to strike by the City of
2 San Jose is GRANTED. (See Evid. Code, §452, subd. (b); see also *Trinity Park, L.P. v. City of*
3 *Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027.)

4 Plaintiffs/ petitioners San Jose Retired Employees Association, Howard E. Fleming,
5 Donald S. Macrae, Frances J. Olson, Gary J. Richert, and Rosalinda Navarro's request for
6 judicial notice in support of memorandum of points and authorities in opposition to demurrer and
7 in the alternative motion to strike by the City of San Jose is GRANTED, but only insofar as the
8 court takes judicial notice of the existence of the documents, not necessarily the truth of any
9 matters asserted therein. (See Evid. Code, §452, subd. (d); *People v. Woodell* (1998) 17 Cal.4th
10 448, 455.)

11 Defendant/ respondent City of San Jose's demurrer to plaintiffs/ petitioners San Jose
12 Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary
13 J. Richert, and Rosalinda Navarro's complaint is OVERRULED. At the very least, plaintiffs/
14 petitioners' challenge to section 1511-A is ripe for judicial review.

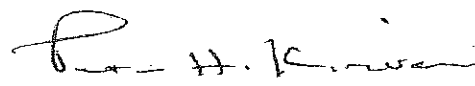
15 Defendant/ respondent City of San Jose's alternative motion to strike portions of
16 plaintiffs/ petitioners San Jose Retired Employees Association, Howard E. Fleming, Donald S.
17 Macrae, Frances J. Olson, Gary J. Richert, and Rosalinda Navarro's complaint is DENIED. The
18 ripeness requirement "should not prevent courts from resolving concrete disputes if the
19 consequence of a deferred decision will be lingering uncertainty in the law, especially when
20 there is widespread public interest in the answer to a particular legal question." (*Pacific Legal*
21 *Foundation v. California Coastal. Com.* (1982) 33 Cal.3d 158, 170.) In *Cal. Alliance, supra*, 56
22 Cal.App.4th 1024, 1030, the court wrote, "Although the public importance of an issue is not
23 controlling [citation], we must also recognize that contrary to city's argument, the public interest
24 in resolving this controversy is substantial." In the same vein, the court finds the dispute here to
25 be sufficiently concrete and the public interest sufficiently significant/ substantial to warrant
26 judicial review.

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1 This ruling is without prejudice to defendant/ respondent City of San Jose asserting
2 ripeness at trial.

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4 Dated: 2/19/13



Hon. Peter H. Kirwan
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

(ENDORSED)
FILED
FEB 19 2013

TO: Silver Hadden Silver Et Al
Post Office Box 2161
Santa Monica, CA 90407-2161

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of California, County of Santa Clara
BY Diana Harris DEPUTY

RE: San Jose Retired Employees Association, et al vs City Of San Jose
Case Nbr: 1-12-CV-233660

PROOF OF SERVICE

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Arthur A Hartinger , Meyers Nave Riback Silver Et Al
555 12th Street, Suite 1500, Oakland, CA 94607
Harvey L. Leiderman , Reed Smith LLP
101 Second Street, Suite 1800, San Francisco, CA 94105-3659

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 02/19/13. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Ingrid C Stewart, Deputy

EXHIBIT 5

7/19

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On May 8, 2013, I served the document(s) described as **REQUEST FOR JUDICIAL NOTICE OF SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT AND ROSALINDA NAVARRO IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF ISSUES** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth on the attached service list:

☒ [By Electronic Mail] I caused the document(s) to be transmitted to the addressee(s) via electronic mail at the addresses listed on the attached Service List.

☐ [By Overnight Delivery] I caused such envelope(s) to be delivered to the above address(es) within 24 hours by overnight delivery service

Executed on May 8, 2013, at Santa Monica, California.

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